

### **REMARKS**

Applicant thanks the Examiner for her careful review of the application. Claims 1-5 have not been amended. Claims 13-24 are added.

#### **Rejection of Claims based on Obviousness-Type Double Patenting**

Claims 1-5 stand rejected under the nonstatutory, obviousness-type double patenting rejection as unpatentable over the device seen in Figure 16 of U.S. Patent No. 6,708,830. Applicants respectfully traverse this rejection.

Applicant points out that, as noted in the Manual of Patent Examining Procedure, "Any obviousness-type double patenting rejection should make clear . . . the differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application." MPEP § 804(II)(B)(1). The MPEP further states that "the disclosure of the patent may not be used as prior art." *Id.*

The Office Action does not assert that claims 1-5 are obvious in light of any specific claim from U.S. Patent No. 6,708,830. Rather, the Office Action refers to a double patenting rejection "over the device best seen in Figure 16" of that patent. Applicant respectfully observes that double patenting rejections are based, not on similarity to a figure in an issued patent, but on a comparison of the claims. Because the Office Action does not compare claims in the application to claims in the patent, Applicant asserts that the double patenting rejection is inappropriate.

Furthermore, Applicant notes that although the drawing are identical, the claims of the application and patent are directed to different features of the rack. Claims 1-5 are directed toward a cable trough structure for use with a telecommunications rack. In contrast, all of the claims in U.S. Patent No. 6,708,830 are directed to an assembly having ring structures for defining a vertical cable path in a telecommunications rack. Claim 1 of the '830 patent is instructive for comparison:

1. An assembly for defining a vertical cable path on a telecommunications equipment rack, the assembly comprising:  
a first ring structure defining a first cable channel with an open side  
a second ring structure defining a second cable channel with a closed side defined by overlapping fingers;  
the second ring structure being hinged to the first ring structure and movable between a first position and a second position;  
the second ring structure blocking access to the first cable channel when in the first position by closing the open side of the first cable channel, wherein the first and second cable channels define separate cable pathways;  
the first cable channel being accessible through the open side when the second ring structure is in the second position.

As seen from a comparison of any of the claims, claims 1-5 of the present application recite wholly different structures from any of the claims of the patent. Again, absent some showing that the claims in the present application are obvious variants of the invention claimed in U.S. Patent No. 6,708,830, Applicant respectfully asserts that a double patenting rejection is inappropriate.

Claims 1-5 remain pending in the present application. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the double patenting rejection with respect to all claims in the present application.

#### Added Claims

Claims 13-24 are added in the present Response to further define the cable trough invention described in the specification at pages 10-12. Applicant asserts that these claims are within the species elected in Applicant's communication dated June 20, 2005, in response to the Examiner's Restriction Requirement mailed on May 20, 2005.

Serial No. 09/905,708

Group Art Unit: 3634

Summary

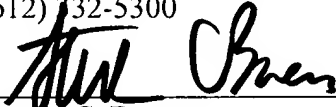
For at least the reasons stated above, Applicant respectfully requests full allowance of the claims. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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Date: \_\_\_\_\_

Dec. 7, 2005



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